

Attorney Docket No.: DEX-0184
Inventors: Roberto A. Macina
Serial No.: 09/806,311
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REMARKS

Claim 1 is pending in the instant application. The rejection of claim 1 under 35 U.S.C. § 112, first paragraph for lack of enablement has been maintained. Reconsideration is respectfully requested in light of the following remarks.

The Examiner suggests that the data presented in the poster provided with the response is not commensurate in scope with the claims. In particular, the Examiner suggests that the data does not present stomach or small intestine data which is recited in the claim as a method of detecting these cancers.

MPEP § 2164.07 is clear, evidence will be considered sufficient if, considered as a whole, it leads a person of ordinary skill in the art to conclude that the asserted utility is more likely than not true.

The poster provided with the last response demonstrates that mRNA expression levels of Cln101 (referred to as CC2 in the instant specification) predictably correlate with protein (SEQ ID NO:2) expression levels in various types of cancer. Further, the poster clearly demonstrates that Cln101 or CC2 protein expression is detectable in samples other than cancer tissue samples. Thus, the poster provides evidence refuting any basis for the Examiner's concerns regarding mRNA expression levels being

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predictive of protein expression levels for this protein. This poster also provides evidence refuting any basis for the Examiner concerns relating to this protein being detectable in samples other than cancer tissue sample.

Further, this poster clearly provides evidence sufficient to lead a person of ordinary skill in the art, upon review of mRNA expression data presented in the instant application for stomach cancer and cancer of the small intestine, to conclude that the asserted utility for the protein encoded thereby and its detection in samples other than cancer tissue samples is more likely than not true.

This poster thus clearly refutes any reasonable basis provided by the Examiner for doubting the objective truth of statements in the specification with respect to how to make and use the instant claimed invention.

Reconsideration and withdrawal of this rejection under 35 U.S.C. § 112, first paragraph is therefore respectfully requested.

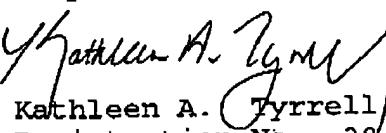
Conclusion

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending

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claims is earnestly solicited.

Respectfully submitted,


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Date: September 28, 2004

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